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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-70-291
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services
Action title	Modification of Indirect Medical Education Payments
Document preparation date	NEED GOV APPROVAL BY

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#excreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at *COV 2.2-4011(i)* as discussed below.

Item 326 HHH of the 2004 Appropriations Act directs DMAS to provide an increase in IME payments for non-state government owned hospitals with base year 2002 Medicaid NICU utilization greater than 50 percent as reported to DMAS prior to March 1, 2004. This additional funding is intended to be distributed between eligible hospitals based on their proportion of Medicaid NICU patient days. This regulatory action codifies this legislative action and conforms to the State Plan Amendment approved by the federal Centers for Medicare and Medicaid Services (CMS).

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled *Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services: Modification of Indirect Medical Education Payments (12 VAC 30-70-291)* and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to provide, for qualifying hospitals, additional indirect medical education (IME) payment to hospitals based on their NICU utilization, above and beyond the IME payment calculated for the hospitals every year.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation

is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The section of the State Plan for Medical Assistance that is affected by this change is the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12 VAC 30-70-291).

The budget language calls for an IME payment enhancement to non-state government owned hospitals with Medicaid NICU utilization greater than 50 percent (as reported to DMAS by March 1, 2004). Based on data available as of March 1, 2004, there are two private hospitals for which the Medicaid NICU utilization meets this standard. The regulatory change provides additional language to codify the IME enhancement as directed by the Appropriations Act.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-70-291		Sets forth formula for calculating the standard IME payments	Provides for an additional IME payment for hospitals with 50 percent or greater Medicaid NICU utilization to provide additional mandated funding

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

These items were defined by the Appropriations Act and therefore no alternatives are possible. This action conforms to and implements a federally approved State Plan change.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.